

This handbook section provides guidance regarding the conversion of a non-OTS-regulated depository institution to a Federally chartered savings institution. This section addresses the following types of charter conversions: (a) non-OTS-regulated State savings bank converting to a Federal thrift; (b) commercial bank converting to Federal thrift; and (c) credit union converting to a Federal thrift.

With the approval of OTS, any depository institution may convert directly to a Federal stock savings institution pursuant to 12 C.F.R. § 552.2-6, or to a Federal mutual charter under 12 C.F.R. §§ 543.8 through .10. To convert to a Federal thrift charter, the institution, upon conversion, must have its deposits insured by the FDIC and must comply with all applicable State and Federal statutes, OTS regulations and policies, and obtain all necessary regulatory, shareholder and/or member approvals.

OTS may also approve the indirect conversion of a stock depository institution to a Federal stock savings institution pursuant to 12 C.F.R. §§ 552.2-1, 552.13 and 563.22(a), through the merger of the stock depository institution into an interim Federal stock savings institution. Depository institution is defined in 12 C.F.R. § 552.13(b)(4) as “any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.”

In order to convert directly to a Federal savings institution, the converting depository institution must be authorized to engage in a direct conversion under its existing statutes and regulations. A National Bank has authority pursuant to 12 C.F.R. § 5.24(f) to engage in a direct conversion to a Federal savings institution. Other depository institutions are not necessarily authorized to engage in a direct conversion under their existing charter and therefore must provide a legal opinion describing how the proposed structure is authorized under Federal and State laws.

Credit unions are not authorized to convert directly to a Federal stock savings institution. A credit union may convert to a Federal stock savings institution subsequent to its conversion to a Federal mutual savings institution, pursuant to 12 C.F.R. Part 563b. OTS will generally require the converted credit union to operate as a Federal mutual savings institution for at least one year before entertaining an application to convert to the stock form of organization.

## **FILING REQUIREMENTS**

### **Delegated Authority**

Generally, the Regional Office under delegated authority may process applications filed under this section, with the exception of applications involving State chartered trust companies and credit unions. An application proposing the conversion of a State chartered trust company or a credit union to a Federal savings institution charter is not eligible for delegated processing. Certain situations may cause any delegated filing to be non-delegated, including applications that raise a significant issue of law or policy or that seek regulatory waivers. See Delegation Section 040 of the handbook for further information on the delegation process.

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**Expedited and Standard Procedures**

The application is not subject to the expedited processing procedures set forth in 12 C.F.R. Part 516. Accordingly, the application will be processed utilizing the procedures set forth in 12 C.F.R. §§ 516.210-516.290.

**Meetings**

The applicant must contact the appropriate Regional Office prior to submission of the application to discuss the need for meetings related to its application to convert to a Federal savings institution. Depending upon the circumstances of the proposal, multiple meetings may be required in advance of the conversion to a Federal savings institution.

*Prefiling Meeting Requirement*

The applicant must meet with the Regional Office for at least one prefiling meeting if the proposal involves a conversion of either a commercial bank or a credit union to a Federal savings institution. For transactions involving a conversion to a Federal savings institution from a State-chartered savings bank regulated by the Federal Deposit Insurance Corporation (FDIC), the Regional Office, at its discretion, may require a prefiling meeting. In any case, it is the applicant's responsibility to contact the Regional Office in a reasonable time period in advance of filing the application to discuss prefiling meeting requirements. The purpose of the meeting is to permit OTS and the applicant to identify any legal or policy issues before submission of the application, and to enable the applicant to address these issues early in the process. The Regional Office will coordinate with the applicant to determine a schedule and forum for a meeting. The forum for the meeting will usually be in person at the Regional Office, although the Regional Office may consider meetings by telephone or video conferencing at its discretion on a case-by-case basis. OTS may decide not to accept a submitted application until the prefiling meeting requirements in 12 C.F.R. Part 516 are met.

When a meeting is required, the applicant should contact the Regional Office to determine which representatives from the applicant should attend the meeting, and what information will need to be provided in advance of the meeting. These individuals will be expected to discuss the salient aspects of the proposed transaction. The applicant may be required to submit a draft business plan to the Regional Office prior to the meeting in a time frame in advance of the meeting acceptable to the Regional Office. At a minimum, the plan should include:

- A clear and complete description of the projected operations and activities;
- Financial projections for a three-year period;
- A discussion of the associated risks and impact of the transaction on the institution;
- Identification of all or a majority of the proposed director and key senior executive officers with documentation to support that these individuals have the required qualifications and experience to prudently oversee operations; and

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- A discussion to demonstrate how the charter will serve the credit and lending needs in its target market.

*Preopening Meeting*

In transactions covered by this section, the applicant will generally be required to meet with the Regional Office for a “preopening” meeting following approval of the application, but prior to its conversion to a Federal savings institution. The Regional Office will contact the applicant to discuss the forum for the meeting and who should attend. Regional Office staff will discuss the following with the applicant: satisfaction of conditions of approval; supervision and examination process; responsibility and fiduciary duty of the board of directors and management; and, any regulatory issues germane to the successful operation of the savings institution.

**Information and Form Requirements**

All applications should be filed with the appropriate Regional Office in accordance with 12 C.F.R. Part 516. The applicant should file the original and two copies of the application, and application fee with the appropriate Regional Office. The original filing, all copies, and all exhibits and other pertinent documents must be clearly marked and captioned as to the type of filing. One copy must contain original signatures on all executed documents. For applications that are not delegated to the Regional Office, an additional three copies of the application should be filed with the Applications Filing Room in OTS-Washington.

No specific application form or instructions exist for applications by a non-OTS-regulated financial institution to convert to a Federal savings institution. The filing requirements vary depending upon the structure of the transaction, i.e. whether the transaction is proposed as a direct conversion, or involves an indirect conversion using a newly-chartered Federal savings institution in a merger or a purchase and assumption transaction. Set forth below are the basic filing requirements for these types of applications (additional information may be required on a case-by-case basis):

*General Information*

- Legal name of applicant(s), including name of holding company, if applicable;
- Complete address of home office and any branch offices;
- Name, telephone number and address of contact person(s) for the application;
- Complete list and description of all subsidiaries of the bank or credit union;
- Summary of proposed transaction and reasons for conversion;
- Discussion of deposit insurance for the resulting savings institution;
- Proposed charter and bylaws conforming to 12 C.F.R. §§ 552.3 and 552.5 (stock) or 12 C.F.R. §§ 544.1 and 544.5 (mutual). Copies of a model charter and model bylaws are available in the Applications Handbook, which is contained on the OTS Website. Certain

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variations from the models are set forth in the regulations and considered preapproved. OTS must specifically approve any other variations; and

- Board of directors' resolution authorizing the transaction.

*Opinions*

- A legal opinion describing how the proposed transaction is permissible under Federal and State laws; and
- A tax opinion describing the consequences of the proposed transaction.

*Financial Information*

- Three-year business plan meeting OTS requirements;
- Call reports for the last three years of operation for depository institutions without independent audit reports;
- Copies of the three most recent independent audit reports of the converting depository institution, if applicable;
- Copies of financial reports filed with the existing principal regulator and the Securities and Exchange Commission, if applicable, for the holding company(ies) or depository institution since the date of the last independent audit;
- A capital reconciliation showing compliance with OTS capital requirements and a discussion of any differences between the applicant's accounting standards and the standards required by OTS. OTS Schedule CCR and the instructions, as well as information on capital adequacy, should be reviewed in preparing this reconciliation;
- A general description of the deposit, investment and lending activity of the institution, including an approximate percentage of assets each type of investment and loan represents; and
- A summary of deposits and assets attributable to each office location.

*Director and Senior Management Information*

- Each director and senior executive officer of the applicant that will continue in his/her position at the resulting Federal savings institution, must submit the following:
  - \* Name and Position;
  - \* An executed Interagency Biographical and Financial Report (OTS Form 1623);
  - \* An executed RB-20 Certification;
  - \* Two completed FBI fingerprint cards (with OTS nomenclature) for each individual (plus a \$23 processing fee per individual set);

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- \* For each director, submit an executed Oath of Director of FDIC-Insured Institution;
  - \* Copies of any existing or proposed employment contracts. The agreements must comply with OTS guidelines set forth in RB 27a and 12 C.F.R. §§ 563.39 and 563.161; and
  - \* For a converting stock depository institution, a listing of all entities owning or controlling more than 10% of the stock, directly or indirectly, alone or acting in concert.
- OTS policy requires background investigations to be completed in accordance with the guidance in RB-20. RB-20 authorizes OTS to request supplemental information from applicants if the information is useful in completing a thorough background investigation. Applicants can request a waiver from filing portions of this information by providing justification stating why this information is unduly burdensome or unnecessary. For those individuals who have been previously reviewed and approved by the appropriate bank regulatory authority, OTS will typically grant a waiver of the biographical and financial report and fingerprint card. For directors and officers who have been associated with the existing bank for a sufficient amount of time to assess their effectiveness (typically involving tenures in excess of one year or through one examination cycle), a waiver of these documents may also be granted. For all other individuals, the Regional Office will conduct a background investigation in compliance with RB-20. Individuals must be fingerprinted by an independent third party unrelated to the individual or companies affiliated with the individual on fingerprint cards bearing the OTS identification number. Results of all background checks should be addressed in the Regional Office's digest.

*For Existing Bank Holding Companies that will not become Savings and Loan Holding Companies, submit the following items of Application H-(e):*

- Cover page and signature page;
- Item 110 - Details of Proposed Acquisition;
- Item 120 - Regulatory Issues;
- Item 220 - Controlling Shareholders/Affiliates; and
- Item 410 - Management Officials.

*For Stock chartered institutions, submit the following items:*

- Form of stock certificate, which must include any required restrictive legends; and
- All documents pertinent to the purchase and distribution of stock, including stock warrants and option plans.

*Other Information*

- Copies of applications submitted to other agencies and, upon their receipt, approval letters;

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- Copies of the three most recent safety and soundness examination reports prepared by the principal regulator;
  - Copies of the most recent compliance, CRA, and/or specialty examination report prepared by the principal regulator;
  - Copies of all current formal enforcement actions relating to the applicant, its holding company(ies), controlling persons, subsidiaries and affiliates;
  - A description of the investment and lending activity of the existing depository institution, including the total amount of each type of investment and loan, as well as the percent of assets each category constitutes. To the extent that any particular investment or loan category exceeds the percentage of assets limitations imposed by Section 5(c) of HOLA, identify the assets and provide a plan, including time frames, to meet such limitations. Requests for a grace period permitted under Section 5(c)(5)(A) of HOLA should be submitted as part of the application;
  - A completed QTL worksheet as of the most recent quarter, and a schedule that projects the proposed savings institution's QTL performance over the three year business plan. For institutions with interstate branch networks (i.e., branches outside the state in which the institution's home office is located), the converting institution must also demonstrate compliance with Section 5(r) of HOLA. If none of the exceptions in Section 5(r)(2) apply, the proposed savings institution must separately demonstrate QTL in each state where it operates an interstate branch or branches. To the extent that the savings institution will fail to comply with its minimum QTL requirement, the applicant must provide a plan, including time frames, to meet such limitations. Requests for a QTL waiver should be submitted as part of the application. Applications requesting a QTL waiver are non-delegated;
  - Copies of the financial depository institution's current charter and bylaws;
  - Identify EDP servicers used by the applicant or describe the extent of EDP work performed in-house;
  - If the converting institution operates a transactional web site, information describing the web site, its activities, and security and testing procedures should be provided;
  - In a direct conversion, copies of the executed OTS Form 1582. Any sections that do not apply should be marked "Not Applicable" with an explanation provided;
  - In transactions involving indirect conversions, the applicant is required to submit OTS Form 1495 to establish the savings institution for the merger with the existing depository institution;
  - If the applicant currently operates service corporations or subsidiaries and plans to continue the proposed activities, it must file a service corporation application or an operating subsidiary application pursuant to 12 C.F.R. Part 559. Application must be made with OTS, as well as the FDIC pursuant to 12 U.S.C. § 303.141 (see Subordinate Organizations Section 605 of the Handbook for additional information); and
  - If the applicant currently operates a trust department and plans to continue to engage in trust activities, it must file a trust application under 12 C.F.R. Part 550. See Trust Powers Section 620 of the Handbook for further information regarding trust activities.

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*Community Reinvestment Act*

- A detailed discussion of the CRA plan for the institution and how the savings institution will satisfy its obligations pursuant to 12 C.F.R. Part 563e.

*Holding Company and Controlling Shareholder Information*

If the converting depository institution has a holding company that will become a savings and loan holding company in the transaction, a holding company application must be filed pursuant to 12 C.F.R. Part 574 (see Holding Companies Section 500 of the Handbook for additional information). If the resulting savings institution is controlled directly by one or more individuals, or by persons acting in concert to control the savings institution, a Change of Control Notice may be necessary pursuant to 12 C.F.R. Part 574 (see Control Section 300 of the handbook for additional information).

**Confidentiality**

The applicant must submit in writing, concurrently with the submission of the application, any requests to keep specific portions of the application confidential. In accordance with the Freedom of Information Act, the request should discuss the justification for the requested treatment and should specifically demonstrate the harm (e.g., to competitive position, invasion of privacy) that would result from the public release of information. OTS will not treat as confidential the portion of an application describing the plan to meet the Community Reinvestment Act objectives.

Information for which confidential treatment is requested should be: (i) specifically identified in the public portion of the application by reference to the confidential section; (ii) separately bound; and (iii) labeled “confidential.” The applicant should follow these same procedures when filing supplemental information to the application. OTS will determine whether information designated as confidential must be made available to the public under the Freedom of Information Act. OTS will advise the applicant before it makes information designated as confidential available to the public.

**SPECIAL CONSIDERATIONS**

**Publication Requirements**

OTS requires publication under 12 C.F.R. Section 543.2(d) for applications involving a direct conversion of an existing depository institution to a Federal savings institution. OTS requires publication of a notice for the formation of a Federal savings institution for an indirect conversion, but permits such publication to occur simultaneously with the public notice required in 12 C.F.R. § 563.22 and 12 U.S.C. § 1828(c) for the merger or purchase and assumption transaction (see Combinations Section 200 and Bank Merger Act Transmittal Forms Section 030 of the Handbook for additional information). Additional public notice requirements may apply for transactions involving change in control applications filed pursuant to 12 C.F.R. § 574.3, involving either a holding company(ies) (see Holding Companies Section 500 of the Handbook for additional information), or where the converting

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depository institution is controlled by one or more individuals (see Control Section 300 of the Handbook for additional information).

- **Comment Procedures**

Any person may submit a written comment to the Regional Office supporting or opposing a charter conversion application within 25 days after the filing date of the application. OTS will not consider any late filed comments unless: the commenter demonstrates good cause for why they could not submit a timely comment, or, OTS concludes that the comment addresses a significant regulatory concern and will assist in the disposition of the application. OTS can extend the 25 day comment period with demonstrated good cause for why a commenter was unable to submit a timely comment. The duration of an extension request is subject to the discretion of OTS on a case-by-case basis, after consideration of the unique circumstances of each extension request.

The comment should recite relevant facts, including any demographic economic or financial data supporting the commenter's position. If the commenter opposes the application, the comment should also: 1) address at least one reason for denial based upon regulatory criteria for denial; 2) support the reason for denial with relevant facts and supporting data; and, 3) address how the approval of the application is harmful to the community or the commenter. While OTS will accept and consider all comments, including those that do not meet all of the content criteria, commenters are encouraged to include all relevant information and arguments. The commenter may also request an informal meeting pursuant to 12 C.F.R. §§ 516.120 and 516.170 with their comment, along with a description of the issues and facts to be discussed and justification for why written submissions are insufficient to adequately address those facts or issues.

If the commenter has filed a written request for a meeting and the request contains the required information set forth in 12 C.F.R. 516.120(b), OTS will arrange a meeting. If an informal meeting is requested, the commenter must simultaneously send a copy of the written request to the applicant. OTS will generally provide an applicant an appropriate opportunity and period of time to respond to submitted comments.

OTS will facilitate the informal meeting between the applicant, the commenter(s) and any other interested person(s). OTS has discretion to determine the format of the meeting, including telephone conference or face-to-face meetings. OTS will inform the applicant and commenters requesting an informal meeting of its decision on a request for a meeting, or of its decision to hold an informal meeting on its own initiative. OTS may also invite any other interested persons to attend. OTS will inform the participants of the date, time, location and format for the meeting in reasonable time in advance. OTS anticipates that informal meetings will be sufficient to facilitate the resolution of issues in most cases.

If an informal meeting fails to facilitate the resolution of issues to the satisfaction of any participant in an informal meeting, OTS may proceed to conduct a formal meeting before a presiding officer upon the filing of a request. Any participant requesting a formal meeting



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pursuant to 12 C.F.R. §§ 516.170 and .180, should submit a request to OTS within three days after the informal meeting, and provide copies of its request to the other participants of the informal meeting. The request must describe the nature of the issues or facts to be presented and must demonstrate that material issues or facts have not been adequately addressed by the informal meeting, and that a formal meeting is necessary to develop a record sufficient to support a determination on those facts or issues. OTS will not arrange an informal meeting where a request is clearly frivolous or clearly lacking a factual basis. OTS may elect to hold a formal meeting on its own initiative if deemed necessary to assist in the disposition of the application or issues raised by the application.

OTS will issue a Notice of Formal Meeting if it decides to hold a formal meeting, and send the notice to the applicant, to any person requesting a formal meeting, and to any interested person, in its discretion, it desires to invite. Any person receiving the Notice of Formal Meeting must notify OTS within ten days of receipt of the notice of their intent to participate in the meeting. All participants in the formal meeting must provide the names of their presenters and copies of proposed exhibits to OTS, to the applicant, and to any other person designated by OTS, no later than five days before the date of the formal meeting. All presenters of documentary material must furnish copies of the material to OTS and to each other participant. OTS will arrange for a transcript of the meeting, with each participant bearing the cost of any copies of the transcript it requests for its use.

OTS anticipates that most formal meetings will follow an informal meeting. Accordingly, OTS will not grant a request for a formal meeting unless an informal meeting has occurred. However, OTS has the authority to conduct a formal meeting without holding an informal meeting if the meeting is beneficial to the review process and will facilitate a resolution of the issues raised by application.

If OTS has arranged an informal or formal meeting, the processing time frames for the application are suspended until OTS determines that a sufficient record has been developed to address the issues raised in the comments.

### **Transition Period For Corporate Governance**

12 C.F.R. § 543.11(c) provides that a six-year plan of governance may be submitted by a State-chartered mutual savings bank, in circumstances where the converting institution has not previously provided for the election of its governing board (trustees, director or managers) by a vote of the members of the institution (some states authorize perpetual boards), and does not want to elect the entire board at the organization meeting. The intended plan provides that within six years, the entire board of directors would be elected by a vote of the members in increments of at least one-fifth of the number of members in each year beginning within two years of conversion. The plan also provides that the newly converted federal savings bank may be organized by its preconversion governing board and addresses the manner of amending the institution's charter during the first two years and other organization and disclosure matters.

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**Qualified Thrift Lender (QTL) or Domestic Building and Loan Association Tax Test (DBLA)**

The converting depository institution should meet the QTL test upon its conversion to a federal savings institution. For institutions with interstate branch networks (i.e., branches outside the state in which the institution's home office is located), the converting institution must also satisfy QTL in each state individually where it operates an interstate branch or branches pursuant to Section 5(r) of HOLA, subject to certain exemptions in Section 5(r)(2). The assets of all branches in each state (not each out-of-state branch separately) are aggregated in determining compliance with QTL for each state. Alternatively, an institution may satisfy its QTL requirements by meeting the domestic building and loan association test of the Internal Revenue Code.

A converting depository institution may be unable to satisfy its QTL requirements initially. OTS will consider granting a converted institution a QTL waiver for up to a two-year period to permit the institution to make a reasonable transition without sacrificing safety and soundness considerations and prudent lending practices. 12 U.S.C. § 1467a(m)(2) allows temporary and limited exceptions to be granted by the OTS. OTS will decide to grant the extension based upon a finding that extraordinary circumstances exist. Any exception would be based upon an acceptable business plan evidencing timely compliance in a safe and sound manner. If the converting institution cannot meet QTL in a state outside the home office state, OTS will consider granting a waiver for good cause for up to a two year period to comply with Section 5(r) of the HOLA. A request for approval of the exception and/or waiver must be submitted with the application.

**Asset Composition**

Section 5(c) of HOLA discusses permissible loans and investments for Federal thrifts and limits certain types of lending to a percentage of assets or capital. It is not uncommon for converting depository institutions to exceed these limitations, especially in consumer and commercial loans. Based on an acceptable business plan evidencing that the asset composition will be brought into compliance with the limitations of Section 5(c) in a safe and sound manner, OTS will generally permit a converted institution to achieve compliance with such limitations within two years following the conversion [see Section 5(c)(5)]. A request for approval of the exception must be submitted with the application and can be approved by the Regional Office.

**Credit Union Memberships**

Credit unions may be members of corporate credit unions and have deposits and capital accounts in such entities. The deposits may be considered commercial loans under HOLA, but the member capital accounts are considered equity investments and are, therefore, impermissible. In some instances, the capital account may not be withdrawn for a certain period of time. Accordingly, OTS may allow the converted credit union to hold the investment until divestiture is possible. A request to retain any such impermissible investments must be submitted with the application.

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**Credit Union Sponsored Shared Service Facilities**

In some instances, credit unions may participate in a shared service facility that is regulated by the National Credit Union Administration. The facility resembles a typical branch office, is generally designated as a “Credit Union Service Center”, and allows the members of the various sponsoring credit unions to conduct certain banking transactions on facility premises. Generally, credit union members may withdraw funds, make deposits, transfer funds between accounts at their credit union, verify account information, and renew time deposits and cash checks. Converting credit unions may wish to continue this type of arrangement for their members' convenience. OTS has allowed this type of arrangement, provided that proper controls and oversight of the activities are in place. The application should include sufficient evidence that such controls and oversight are in place.

**Deposit Insurance**

Generally, in an indirect conversion involving an existing Bank Insurance Fund (BIF) depository institution, the applicant must submit an application and receive approval from the Federal Deposit Insurance Corporation (FDIC) or Savings Association Insurance Fund (SAIF) for insurance of accounts. BIF-depository institutions converting directly to a Federal savings institution have been permitted to retain their BIF insurance of accounts. The applicant should address the impact of the transaction on its deposit insurance. Questions regarding deposit insurance should be discussed with FDIC.

**Federal Home Loan Bank Membership**

The Gramm-Leach-Bliley Act (Section 603) amended Section 5(f) of HOLA to give a Federal savings institution the option of becoming a member of the FHLB.

**Eligibility Examinations**

OTS anticipates that it will conduct an eligibility examination of all credit unions proposing to convert to a Federal savings institution, due to the significant differences in their operations and regulatory oversight structure compared to other converting depository institutions. For converting entities that are not credit unions and have been recently examined by a Federal or State banking or trust regulator, and received satisfactory ratings (CAMELS 1 or 2, Compliance 1 or 2, CRA Outstanding or Satisfactory, Trust 1 or 2) OTS generally will not require an eligibility examination, unless the application raises a material issue not addressed by the report of examination. Also, when the most recent safety and soundness examination is older than six months, OTS will consider the need for an eligibility examination due to the age of the existing examination report. Absent these concerns, OTS will generally rely on the most recent report of examination as part of its review of the application.

The Regional Office should determine the need for an eligibility examination as early in the application process as possible. The eligibility examination may include on- or off-site activities. Prior to commencing the on-site work, OTS will forward a Preliminary Examination Response Kit (PERK) requesting more detailed information that should be made available to the examiners upon their arrival. OTS normally does not charge a fee for its eligibility examination. However, OTS may impose an

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hourly fee if the examination encounters significant problems that require additional review beyond the scope of a standard eligibility examination.

## **REVIEW GUIDELINES**

### **Processing Procedures and Time Frames**

As noted in the Delegated Authority section, certain applications are not subject to delegated authority and are processed concurrently with OTS-Washington staff. As a general matter, correspondence from OTS regarding applications that are non-delegated will be transmitted from OTS-Washington. Correspondence on delegated applications will generally come from the Regional Office.

Within five business days of receipt of the application and the application fee, the Regional Office must notify the applicant of the application's receipt. The appropriate application fee must accompany each application in order for it to be considered filed. For nondelegated applications, the application will not be considered filed until received by both OTS-Washington and the Regional Office.

Within five business days of receipt of the application, the Regional Office will begin its background investigations on individuals who were required to submit such information in connection with the application. Upon receipt of the application, the Regional Office must forward all FBI Fingerprint Cards to OTS-Washington for processing. The background investigations should include, at a minimum, a search of the applicants in the Westlaw and CIIS databases. When applicable, OTS must contact other regulatory agencies to seek additional comments on the applicants, or to request a copy of examination reports from another agency. For applications involving insurance companies, the Regional Office must contact the Insurance Risk Management Specialist in OTS-Washington and request a review of the insurer. All issues that are disclosed in the background check must be addressed directly with the individual. Results of all background checks should be addressed in the Regional Office's digest.

If the application is non-delegated and involves specialty areas, such as trust activities or CRA issues, OTS-Washington must provide a copy of the application to the corresponding OTS-Washington specialist.

Within 30 calendar days of receipt of a properly submitted application, OTS shall take the following actions.

- Deem the application complete;
- Request, in writing, any additional information necessary to deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

Failure by OTS to act within 30 calendar days of receipt of the application for processing shall result in the filed application being deemed complete, commencing the period for review.

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OTS must timely review all requests for a waiver of an application requirement that certain information be supplied. Unless OTS requests, in writing, additional information about the waiver request, or denies the waiver request, the waiver request shall be deemed granted.

If additional information is requested, a response must be submitted within 30 calendar days of the letter requesting such information. The applicant may, in writing, request a brief extension of the 30-calendar day period for responding to a request for additional information, prior to the expiration of the 30-calendar day time period. OTS, at its option, may grant the applicant a limited extension of time in writing. Failure to respond to a written request for additional information within 30 calendar days of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial or disapproval of the application.

After the timely filing of additional information in response to any initial or subsequent request by OTS for additional information, OTS has 15 calendar days to review the additional information for completeness or appropriateness and take one of the following actions:

- Request, in writing, any additional information necessary to deem the application complete;
- Deem the application complete; or
- Decline to further process the application if it is deemed by OTS to be materially deficient and/or substantially incomplete.

The 15-day review period commences when the OTS receives a response that purports to respond to all questions in the information request. OTS may extend the 15-day review period for an additional 15 calendar days, if OTS requires the additional time to review the response. OTS will notify the applicant that it has extended the period before the end of the initial 15-day period.

Failure by OTS to act within 15 calendar days of receipt of the additional information shall result in the filed application being deemed complete, commencing the period for review.

OTS may elect to conduct an eligibility examination during the review process. OTS will not deem an application complete until it concludes the examination. In addition, OTS may request additional information as a result of the eligibility examination, and the applicant must submit a response in accordance with the time frames set forth in this section.

Once the application has been deemed complete, there is a 60-calendar day review period during which time OTS will take into consideration all factors present in the application and render a decision thereon. If, upon expiration of the 60-day review period, assuming no extension has been granted, OTS has failed to act, the application is deemed approved automatically, and the applicant may thereafter consummate the transaction. If multiple applications are submitted in connection with one transaction, the applicable review period for all applications is the review period for the application with the longest review period, subject to statutory review periods.

During the review period, OTS may request additional information if the information is necessary to resolve or clarify the issues presented in the application. OTS may also notify the applicant that the

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application is incomplete and require that the applicant submit additional information to complete the application. The review period can be extended an additional 30 calendar days if OTS determines that additional time will be required to analyze the proposed transaction. In such cases, OTS must notify an applicant prior to the expiration of the period for review. In situations in which an application presents a significant issue of law or policy, OTS may extend the applicable period for review of such application beyond the time period for review. In these cases, written notice must be provided to an applicant no later than the expiration of the time period.

Under 12 C.F.R. § 516.290, if OTS has not acted on a pending application within two calendar years after the filing date, OTS may deem the application withdrawn unless OTS determines that the applicant is actively pursuing a final determination on the application. Applications that are subject to this withdrawal provision are those that have failed to timely take action such as filing required additional information, or OTS has suspended processing of an application based on circumstances that are, in whole or in part, within the applicant's control and have failed to take reasonable steps to resolve these circumstances.

For purposes of calculating processing time frames, OTS does not include the day of the act or event, in determining the date the time period commences. In determining the conclusion of a time period, when the last day of the time period is a Saturday, Sunday, or a Federal holiday, the last day will become the next day that is not a Saturday, Sunday, or Federal holiday.

### **Regulatory Criteria**

Applications to convert to a Federal thrift are generally subject to the same standards for approval as applications for permission to organize a new thrift as set forth in 12 C.F.R. §§ 543.2(g)(1) and 552.2-1(b). Section 5(e) of the HOLA sets forth the basic criteria that OTS must consider when acting on an application for permission to organize a Federal savings institution. Section 5(e) states that OTS may grant a Federal charter only if, in OTS' judgment:

- The organizers are persons of good character and responsibility;
- A need exists for the savings institution in the community to be served;
- There is a reasonable probability of the savings institution's usefulness and success; and
- The savings institution can be established without undue injury to other local thrift and home-financing institutions.

For the criteria above, the existence of the depository institution will generally serve to demonstrate that a need exists, and that the conversion will not result in undue injury to existing financial institutions.

12 C.F.R. § 552.2-1(b)(1)(v) (12 C.F.R. § 543.2(g)(1)(v) for mutual savings institutions) requires OTS to consider whether the savings institution will perform a role of providing credit for housing consistent with safe and sound operations of a Federal savings institution.

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Pursuant to 12 C.F.R. § 563e.29, OTS must consider the savings institution's plans for meeting its objectives under the Community Reinvestment Act. OTS will review the proposed plan for satisfying the CRA and may deny or condition approval based upon this review.

If the application involves the formation of a de novo thrift and the merger or purchase and assumption of the converting institution into the newly-chartered de novo, the application will also be reviewed under the standards for mergers or purchase and assumptions set forth at Section 10(s) of HOLA, Sections 5(d)(3) and 18(c) of FDIC, and 12 C.F.R. §§ 552.13 and 563.22(d).

Converting institutions that have been in existence less than three years will be subject to all approval criteria and other requirements applicable to de novo Federal institutions, including the policy considerations outlined in 12 C.F.R. § 543.3.

### **Decision Guidelines**

The statutory and regulatory requirements are designed to ensure the viability and safe and sound operation of the savings institution. In general, the analysis should conclude that capital is sufficient in relationship to the risk-profile of the institution, management has the necessary expertise and controls to implement the business plan, the institution will meet the needs of the community it will serve, and that the converted institution will be operated in compliance with the laws, rules and regulations applicable to a Federal savings institution. If, based upon this review, it is determined that the savings institution will not operate in compliance with laws, rules and regulations applicable to a savings institution, or that the institution lacks the management or financial resources to ensure the institution is prudently run in a safe and sound manner, a denial recommendation may be necessary. The following factors should be considered in analyzing the application to determine if the transaction satisfies the applicable statutory and regulatory criteria for approval:

- Did the applicant submit the following forms and information:
  - \* OTS Form 1623 (Interagency Biographical and Financial Report); properly executed RB-20 Certification; and FBI Fingerprint Cards, for each director, senior executive officer, and controlling shareholder?
  - \* Copies of proposed employment contracts and evidence of regulatory compliance?
  - \* Description and copies of any proposed stock option plans?
  - \* Discussion of specific policies addressing compliance with Sections 23A, 23B, 22(g) and (h) of the Federal Reserve Act, and with 12 C.F.R. §§ 563.41 and .42?
  - \* Oaths of Directors?
  - \* Proposed charter and bylaws?
  - \* Copies of all proposed contracts with affiliates, all contracts not in the ordinary course of business or in excess of 15 percent of the proposed operating budget?
  - \* Three-year business plan?

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- \* CRA plan?
  - \* Notices and/or application forms for related filings, i.e. subsidiaries, trust powers, etc.?
  - \* Listing of all subscribers to capital stock that are directors, senior executive officers, ten percent shareholders, and other insiders?
  - \* Information to demonstrate that the application meets relevant approval standards?
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- Did the certification or background check (FBI, LEXIS/NEXIS and/or Westlaw, and CIIS) of proposed management and ownership indicate that they have been the subject of any enforcement, criminal or questionable actions?
  - Was any adverse information found in the background reviews not disclosed by any individual in their RB-20 Certification or on OTS Form 1623?
  - Do the Interagency Biographical and Financial Reports (OTS Form 1623) disclose any questionable information (i.e., prior employment with any type of financial institution must be checked)?
  - In applications involving a proposed existing parent company(ies), did the background review or RB-20 Certification disclose any questionable information on the company(ies) or any affiliate(ies) of the company(ies)?
  - Was any adverse information found in the background reviews not disclosed by the company(ies) in its RB-20 Certification Form?
  - For transactions with affiliates, will the transactions and contracts comply with Sections 23A and 23B of the Federal Reserve Act, and with 12 C.F.R. §§ 563.41 and .42?
  - Will the savings institution's board of directors have sufficient independence from its parent holding company(ies) and affiliates to ensure that the savings institution will continue to operate without undue influence from these affiliates?
  - Do the board of directors and senior management have the qualifications and experience necessary to operate the proposed charter in a safe and sound manner?
  - Will the savings institution have sufficient full-time management to ensure safe and sound operations?
  - Does the proposed salary and bonus structure appear reasonable?
  - Do proposed employment agreements comply with the requirements of 12 C.F.R. § 563.39 and RB 27-a?
  - Will the board of directors meet the composition requirements of 12 C.F.R. § 563.33(a)?
  - Has the applicant identified the proposed board and management committees, their functions, and are these committees adequate?
  - Will sufficient fidelity coverage on officers and employees be maintained?
  - Will the applicant comply with the Management Interlocks Act?



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- Does the business plan satisfy OTS requirements?
  - Are the underlying assumptions of the business plan reasonable?
  - Do the lending activities present unusually high elements of risk, such as a significant volume of activity or concentrations of activity in sub-prime lending, speculative lending, or credit card activity?
  - Do the proposed savings and lending services appear reasonable?
  - Will the proposed balance sheet and business strategy comply with the lending and investment limitations of Section 5(c) of HOLA and 12 C.F.R. Part 560?
  - Does the business plan demonstrate compliance with OTS capital requirements over the three-year projections?
  - Do the dividend projections in the business plan reconcile with the proposed dividend policy?
  - Does the savings institution have capital reserves to offset potential adverse changes in market conditions or for operational performance by the savings institution below business plan projections?
  - Is capital adequate based upon the proposed business philosophy or for proposed charters with specialized operations or higher risk profiles (e.g. Internet based banking)?
  - Do the business plan projections indicate that QTL compliance will be maintained?
  - Are the business plan assumptions reasonable and consistent with local community needs?
  - Does the savings institution have a reasonable plan to meet its obligations under the CRA?
  - Will the savings institution meet the identified convenience and needs in the target market, including the low- and moderate-income needs?
  - Will the savings institution provide credit for housing consistent with safe and sound banking principles?
  - Will Internet banking activities be conducted in compliance with OTS and Interagency policy?
  - Do the charter and bylaws comply with regulatory requirements?
  - Has the institution addressed the continuation of deposit insurance by FDIC?

### **Conditions**

Generally, the following conditions will be imposed on any approval for institutions that are converting from a non-OTS-regulated depository institution to a Federal thrift charter.

- The applicant must receive all required regulatory and shareholder approvals for the proposed transaction and submit copies of all such approvals to the Regional Office prior to consummation of the proposed transaction;

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- The applicant must consummate the proposed transaction within one hundred and twenty (120) calendar days from the date of approval, unless extended by the Regional Director for good cause;
  - On the business day prior to the date of consummation of the proposed transaction, the chief financial officers of the proposed holding company(ies) (Applicants) and the converting institution must certify in writing to the Regional Director that no material adverse events or material adverse changes have occurred with respect to the financial condition or operation of the Applicants and the savings institution as disclosed in the applications. If additional information having an adverse bearing on any feature of the applications are brought to the attention of the Applicants, the converting institution, or OTS since the date of the financial statements submitted with the applications, the transaction must not be consummated unless the information is presented to the Regional Office, and the Regional Office provides written non-objection to consummation of the transaction;
  - The Applicant must advise the Regional Director in writing within 5 calendar days after the effective date of the proposed transaction: (a) of the effective date of the proposed transaction; and (b) that the transaction was consummated in accordance with all applicable laws and regulations, the applications, and the approval; and
  - The Applicant must operate within the parameters of its business plan. The Applicants and the savings institution must submit any proposed major deviations or material changes from the plan (including changes resulting from decisions made by the Applicants), (OPTIONAL LANGUAGE: and in particular, those pertaining to cross-marketing of products of the savings institution and its affiliates, a change in the role of the independent agents, and any changes in the proposed delivery system of the savings institution's products,) for the prior, written non-objection of the Regional Office. The request for change must be submitted a minimum of 60 calendar days before the proposed change is implemented with a copy provided to the FDIC Regional Office.

### *Nonstandard Conditions*

It is not unusual for the approval letter for a conversion application to contain nonstandard conditions of approval. Additional conditions may be warranted in circumstances where the proposed operations are integrated with services or activities involving affiliates, where securities affiliates exist, in structures involving non-shell holding companies, where anti-tying issues are present, or due to unique characteristics or the risk profile of the proposed charter. All nonstandard conditions of approval must be supported with justification in the recommendation memorandum related to approval of the application. Any nonstandard conditions incorporated into the approval letter must be summarized in the National Applications Tracking System record for the application. Listed below are examples of most common nonstandard conditions:

- Any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the OTS for review, must be provided to the Regional Office at least 30 calendar days prior to execution for a written non-objection prior to implementation;

- (For trust only applicants): At least 50 percent of the audit and investment committees established by the savings institution must be directors who are not officers or employees of the savings institution, the applicants or any affiliates. If compliance with this condition involves the selection of additional directors, each director must receive the prior written approval of the Regional Office; and
- The institution must comply with the investment and lending limitations contained in Section 5(c)(2)(D) of HOLA within two years.

## **RECORDKEEPING REQUIREMENTS**

All correspondence related to the processing of the notice or application must be consolidated into a file copy to be sent to a central file. Both the Regional Office and OTS-Washington will maintain a separate file copy for non-delegated filings. The file copy must include a copy of the original filing including any exhibits, all amendments, all internal and external correspondence between interested parties, all documentation associated with the review and analysis of the filing, and all decision, recommendation memorandum, and compliance material. The file copy must be organized and separated into public and confidential material, and clearly identified as such. The public and confidential sections must be arranged in chronological order, or in a similarly organized fashion.

## **MONITORING AND CONTROL**

The Regional Office will monitor compliance with all conditions imposed in connection with an application's approval. The applicant must submit evidence of satisfaction of the conditions included in the approval order or letter to the Regional Office within the stated time frames.

The Regional Office should notify the appropriate staff responsible for the supervision and examination of the savings institution regarding the action taken on an application, and provide staff with copies of the approval order or letter. If an application is approved, the first examination of the savings institution following the approval should include a review of compliance with all conditions of approval and any changes in operations as a result of the transaction.

A review of the application file should be made after all compliance material is received to ensure that the file is complete. Any deficiencies should be corrected before the file is sent to storage.

OTS-Washington may conduct a post audit review of the application in the Regional Office, including a review of the documentation maintained in the application file.

## **INFORMATION SOURCES**

### **Statutes**

12 U.S.C. § 1464  
12 U.S.C. § 1464

HOLA Section 5(b); Deposits and Related Powers  
HOLA Section 5(c); Loans and Investments

## Section: Conversion of Bank or Credit Union to a Federal Charter

Section 430

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12 U.S.C. § 1464	HOLA Section 5(e); Character and Responsibility
12 U.S.C. § 1464	HOLA, Section 5(i) Conversion to a Federal Charter
12 U.S.C. § 1464	HOLA, Section 5(o) Conversion of State Savings Banks
12 U.S.C. § 1464	HOLA Section 5(q); Tying Arrangements
12 U.S.C. § 1464	HOLA, Section 5(r) Out-of-State Branches
12 U.S.C. § 1467a	HOLA Section 10(m); Qualified Thrift Lender Test
12 U.S.C. § 1467a	HOLA Section 10(n), Tying Arrangements
12 U.S.C. § 1468	HOLA Section 11; Transactions with Affiliates
12 U.S.C. §§ 2901, <u>et seq.</u>	Community Reinvestment Act
12 U.S.C. §§ 3201, <u>et seq.</u>	Depository Institution Management Interlocks Act

### Regulations

12 C.F.R. Part 516	Applications Processing Guidelines
12 C.F.R. § 541.18	Interim Federal Institution
12 C.F.R. § 543.1	Corporate Titles of Federally Chartered Institutions
12 C.F.R. § 543.2	Application for Permission to Organize
12 C.F.R. § 543.3	"De Novo" Applications for a Federal Association Charter
12 C.F.R. § 543.5	Issuance of a Charter
12 C.F.R. § 543.6	Completion of Organization
12 C.F.R. § 543.8 through .14	Conversion from State Mutual to Federal Mutual
12 C.F.R. § 544.1 through .5	Charter and Bylaws for Federal Mutual
12 C.F.R. § 545.92	Branch Offices
12 C.F.R. § 552.2-1	Procedures for Organization of Federal Stock Association
12 C.F.R. § 552.2-2	Procedures for Organization of Interim Federal Stock Association
12 C.F.R. § 552.2-6	Conversion from State Stock to Federal Stock
12 C.F.R. § 552.3 through .6-3	Charter and Bylaws for Federal Stock Associations
12 C.F.R. § 552.13	Combinations involving Federal Stock Institutions
12 C.F.R. Part 560	Lending and Investment Limitations
12 C.F.R. § 561.4	Affiliate Definition
12 C.F.R. § 561.5	Affiliated Person (Definition)
12 C.F.R. § 561.14	Controlling Person (Definition)
12 C.F.R. § 561.35	Officer (Definition)
12 C.F.R. § 563.33	Directors, Officers and Employees
12 C.F.R. § 563.39	Employment Contracts
12 C.F.R. § 563.41	Loans and other transactions with affiliates and subsidiaries
12 C.F.R. § 563.42	Additional standards applicable to transactions with affiliates and subsidiaries
12 C.F.R. § 563.43	Restrictions on Loans and Other Investments Involving Affiliated Persons
12 C.F.R. Part 563e	Community Reinvestment Act
12 C.F.R. Part 563f	Management Interlocks Act
12 C.F.R. Part 565	Prompt Corrective Action
12 C.F.R. Part 567	Capital

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**Other**

Regulatory Bulletin 20	Background Investigations
Regulatory Bulletin 27-a	Executive Compensation and Employment Contracts
Regulatory Bulletin 32-5	Qualified Thrift Lender Test
23A and 23B of the Federal Reserve Act	Transactions with Affiliates
OTS Form 1518	Model Bylaws for Stock Associations
Fees and Assessments Thrift Bulletin	

**Application Forms**

OTS Form 1582	Application for Conversion From a State-Chartered Stock or Mutual Association into a Federal Stock or Mutual Savings Association or Savings Bank
OTS Form 1623	Interagency Biographical and Financial Report